IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 1192 OF 1999

Brigadiar Harjit Singh,)
son of late Shri Inder Singh,)
adult, Retired Army Personnel,)
Brigadiar in the Indian Army)
prior to his retirement, at)
present residing at P-5,)
Sultania Lines, Bhopal (M.P.)).. Applicant
(Org. Applicant)

Versus

1. Messrs. Rangmahal Theatre,)
a Partnership firm registered)
under Indian Partnership Act,)
(Summons in prescribed form)
under section 31E(2) of)
Bombay Rent Act, to be)
served on its partner)
Shri Hardip Singh Gulabsingh)
residing at 30, Punam,)
7th floor, 67,Nepean Sea Road)
Bombay 400 006.)

2. Smt. Tej Khanna, wife of Shri)
Gokulchand Khanna, adult,)

Occupation Household,residing)
at 1, Shriram Road, Delhi.).Respondents

Mr. Mohan Bir Singh, Advocate a/w
Mr. Dinesh P. Shah, Advocate, for the
applicant.
Mr. V.A.Thorat, Senior Counsel, a/w Mr.
R.A.Thorat, Advocate, for respondent No.1.

CORAM: J.H.BHATIA,J.

JUDGMENT RESERVED ON: 7.12.2007

JUDGMENT PRONOUNCED ON: 20.12.2007.

ORAL JUDGMENT :

1. Being aggrieved by dismissal of his application under Section 13A1 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for brief, "Bombay Rent Act"), the applicant has preferred the present Revision Application.

2. To state in brief, the dispute pertains to the flat No.30, on the 7th floor of Punam Apartments in Poonam Co-operative Housing Society Limited situated at 67, Nepean Sea Road, Bombay.l The flat consists of three bedrooms, hall, kitchen and a servant room. The flat originally belonged to one Gurumukh Nihal Singh who died

in December, 1969 leaving behind son Prahlad Singh and four daughters, viz. Harbans, Surjeet, Tej Khanna and Satwant. Son Prahlad had half share in the said flat while each of the four daughters had 1/8th share. Prahlad transferred his half share in favour of his two sisters Harbans and Tej Khanna and thus share of each of these two sisters became 3/8th in the flat. Harbans transferred her share to Tej Khanna and thus Tej Khanna hold 3/4th share in the suit flat. The applicant is the son-in-law of Surjeet, who, according to the applicant, made a gift of her 1/8th share in favour of the applicant on 30.3.1993. However, the gift deed was not registered. On 3.6.1994, she executed a Deed of Confirmation of the gift and that document was duly registered on 3.6.1994. Prior to that, on 10.3.1993, Satwant also sold her 1/8th share in favour of the applicant on 10.3.1993. About that sale also, there is no registered document. The present applicant claims to have thus become owner of 1/4th share in the said flat. He made an application to the Society for recording his name in the Register of Society and by Resolution date 12.8.1993, the Society recorded the name of the applicant as one of the co-owners/co-sharers of the flat.

3. The flat was given to respondent No.1 on leave and license agreement dated 16.10.1970 for the purpose

of residence of its partner, Hardeep Singh. The applicant was in the service of the Indian Army and retired from the Army as a Brigadier on 1.5.1993. He was suffering from Thyroid Cancer for a long period and since February, 1987, he was taking treatment at Tata Memorial Hospital and Research Centre at Mumbai and for the purpose of treatment he was required to regularly pay visit to the said Hospital. In view of this, he decided to settle at Mumbai after retirement. He did not have any other premises for residence in Mumbai after retirement. His Commanding Officer who was Area Commander where he had served, issued a certificate to the effect that he was in service of Army and did not have any premises within the local limits of Mumbai where he wanted to settle. Respondent No.2 - Tej Khanna She has given her consent to the applicant to reside in the suit premises. In such circumstances, the applicant filed an application under Section 13A1 of the Bombay Rent Act for eviction of respondent No.1 and for possession of the flat for his own residence as he bonafide required the same for occupation of himself and his family members.

4. Respondent No.2 appeared and admitted the claim of the applicant and she also filed an affidavit dated 5th June, 1993 giving consent in favour of the applicant.

5. Respondent No.1 - occupant of the premises contested the application by filing written statement. Respondent no.1 has denied the claim of the applicant that he has become co-ownerr of 1/4th share by virtue of a sale deed and gift deed. It is also denied that the applicant is suffering from cancer and that he bonafide requires the suit premises for residence of himself and his family members. It is also denied that he had obtained the certificate from the Area Commander of the Armed Forces certifying that he has retired from the service of Army and does not have any premises within Mumbai for his own residence. It is contended that when the application was filed, the applicant was not owner of the suit flat nor he was the landlord of respondent No.1. Therefore, it is contended that the applicant is not entitled to get an order of eviction under Section 13A(1). It is further contended by respondent No.1 that respondent No.2 and other co-opwners had filed RAE Suit No.66/316/1979 in the Court of Small Causes, Bombay against respondent No.1 for eviction and possession on the ground that they bonafide required the premises for their own use and occupation. Respondent No.1 also filed a Standard Rent Application bearing No.1652/SR/1975 in the Court of Small Causes, bombay. During the pendency of the suit, settlement took place between the parties and all the plaintiffs in the

eviction suit agreed to sell the suit flat in favour of wife and son of Hardeep Singh, who is the actual occupant of the flat as a partner of the firm. However, inspite of the agreement dated 14.4.1987, the sale deed was not executed by the owners and, therefore, Mrs. Raminder and Pradeep Singh, the wife and son respectively, of Hardeep Singh filed Suit No.3372 of 1988 for specific performance of the contract and that suit is pending in the High Court. It is contended that in these circumstances the present applicant being, an Army Officer was introduced only with an intention to secure decree of eviction and possession against respondent no.1. However, the applicant is not entitled to get such a decree in view of the facts pleaded by respondent No.1 and the application is liable to be dismissed.

6. Several issues were framed by the Competent Authority. The applicant examined himself and several other witnesses in support of his claim. ON behalf of respondent No.1, Hardeep Singh was examined. After hearing the evidence of the parties, the Competent Authority came to the conclusion that the applicant had failed to prove that he is the landlord of respondent No.1 and also that the certificate was issued to him by the Area Commander to the effect that he had retired from service of Army and had no premises within the

local limits of Bombay for his residence. The Competent Authority has also held that the applicant had failed to prove that he bonafide required the suit premises for occupation of himself and his family members. With these findings, the Competent Authority found that the applicant is not entitled to an order of eviction and possession under Section 13A1.

7. Heard learned Counsel for the parties. The learned Counsel for the parties have taken me through the evidence led by the parties, the impugned judgment and the relevant provisions of law.

8. Mr. Mohan Bir Singh, learned Counsel for the applicant vehemently contended that the approach of the Competent Authority was wrong in appreciating evidence and the circumstances because the Competent Authority observed that the applicant had failed to prove his case beyond shadow of reasonable doubt on all the major points. The learned Counsel contended that the standard of proof as required in eviction proceedings cannot be the standard of proof required in the criminal prosecution. These observations of the Competent Authority reveal that he had not decided the matter on the basis of probabilities as required in civil matters. Learned Counsel also pointed out that the legal provisions have not been considered by the Competent

Authority while rejecting the contention of the applicant that the Area Commander had given necessary certificate. He also contended that respondent NO.2 who holds 3/4th share in the suit flat has given her consent in favour of the applicant and she has also filed affidavit to that effect before the Competent Authority. He also contended that on the basis of gift of 1/8th share of his mother-in-law, Surjeet and sale of remaining 1/8th share by Satwant, the sister of mother-in-law, he has become co-owner to the extent of 1/4th share and this has been accepted by the Co-operative Society and name of the applicant has been recorded as such in the record of the Society. Therefore, as a co-owner he is entitled to occupation and residence in the suit flat and particularly when respondent no.2, the owner of the remaining 3/4th share, has given consent for that purpose, he is entitled to file petition for eviction and possession. It is also contended that there is sufficient evidence on record to corroborate the plea of the applicant that he is a cancer patient and needs the premises for his self occupation and he has no other premises within Mumbai where he wants to settle for the purpose of treatment.

9. Mr. Thorat, learned Senior Counsel for respondent No.1, however strongly supported the impugned judgment and order passed by the Competent Authority.

According to him, the sale deed of 1/8th share allegedly executed by Satwant in favour of the applicant on 10.3.93 was not registered at any time and similarly the gift deed of 1/8th share dated 30.3.93 allegedly executed by Surjeet was also never registered. Only confirmation deed about that gift came to be executed and registered no 3.6.1994. According to Mr. Thorat, on the basis of these two documents, the plaintiff could not claim title over the suit property. At the most, he could claim right over the property only when his name was recorded in the record of Society in August, 1993. The application for eviction was filed on 5.6.93 when the applicant had no title over the property. As such, neither he was the owner of the property nor there was any relationship of landlord and tenant between the applicant and respondent no.1 beore he retired from Army and before he filed the eviction proceedings.Respondent No.1 had never attorned the tenancy in favour of the applicant nor the applicant received rent of the premises from respondent No.1 at anytime. According to him, even if the certificate issued by the Area Commander is believed, still the applicant is required to prove that he bonafide required the suit premises for his own occupation by independent evidence and the evidence placed before the Court is not sufficient to prove the same. Learned Senior Counsel for respondent No.1 contended that in such circumstances the rejection

of the application by the Competent Authority is justified.

10. On perusal of the record, it appears that the applicant has pleaded and deposed that he was in service of Army and he retired from the Army on 1.5.1993. At that time, he was holding the post of Brigadier in the Army. He also deposed that he was not having any premises within the local limits of Mumbai where he wanted to settle and for that purpose, he had obtained a certificate from his Area Commander. Section 13A1 of the Bombay Rent makes a special provision for recovery of possession of premises required for self occupation by members of armed forces of the Union, scientists or their successor-in-interest. The relevant part of Section 13A1 reads as follows :-

> *"13A(1) Members of armed forces of the Union, scientists or their successor entitled to recover possession of premises required for their occupation.*
>
> *(1) Notwithstanding anything to the contrary contained in this Act or any contract -*
> *(A) a landlord, who, -*
>
> *(i) is a member of armed forces of the Union, or*

was such a member and has retired as such (which term shall include premature retirement), or

(ii) ....

(iii) ....

shall be entitled to recover from his tenant the possession of any premises owned by him on the ground that such premises are bona fide required by him for occupation by himself or by any member of his family, by making an application for the purpose of recovery of possession of the premises, to the Competent Authority; and the Competent Authority shall make an order of eviction on that ground if, -

(a) in the case of a landlord who is a member of the armed forces of the Union, he produces a certificate signed by the authorised officer to the effect that, -

(i) he is a member of the armed forces of the Union, or that he was such a member and has retired as such, and

(ii) he does not possess any other premises

suitable for residence in the local area where the premises are situated; or"

Sub-section (2) of Section 13A reads as follows :-

"(2) Any certificate granted under sub-section (1) shall be conclusive evidence of the facts stated therein.

Explanation:- For the purposes of this section,-

(1) "authorised officer", in relation to a member of the armed forces of the Union, means his commanding officer or head of service, including-

(i) in the case of an officer retired from army, the area Commander,"

From this legal provision, it is clear that the certificate granted under sub-section (1)shall be conclusive evidence of the facts stated therein and the authorised officer in relation to an officer retired from the army is his commanding officer or head of service including the Area Commander. In the present case, the necessary certificate was issued by the Major

General, General Officer Commanding, Madhya Pradesh, Bihar and Orissa under whom the present applicant was serving as Brigadier at the time of retirement.

11. Section 79 of the Evidence Act reads as follows :-

> *"79. Presumption as to genuineness of certified copies. - The Court shall presume [to be genuine] every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact and which purported to be duly certified by any officer [of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir] who is duly authorized thereto by the central Government]: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper."*

From this, it is clear that the Court shall presume to

be genuine every document purporting to be a certificate which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the central Government who is duly authorised the Central Government. Not only this, Section 79 also provides that the Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper. As the certificate issued under Section 13A(1)(2) is declared to be a conclusive evidence, it becomes admissible in law and the commanding officer or

head of service including the area Commander is the authorized officer to issue such a certificate. In view of the provisions of Section 79, the Court is bound to presume the certificate issued by the area Commander or the commanding officer, to be genuine and the Court is also bound to presume that the officer by whom such document purports to be signed was, in fact, holding that official character when he signed it. The learned Competent Authority rejected the certificate issued by the Major General, General Officer Commanding, Madhya Pradesh in favour of the plaintiff on the ground that no witness was examined to prove the signature on the certificate. According to the Competent Officer, as per the well-establised principles of law also the

certificate produced on record must be proved by the witness who should identify the signature of a person who had signed it. He observed that inspite of production of certificate, the applicant has failed to examine any witness in this behalf and therefore, that certificate is not proved as per the provisions of law. It appears that the Competent Authority was totally ignorant about the legal provisions contained not only in Section 13A1 but also in Section 79 of the Indian Evidence Act. To this extent, the observations and findings of the Competent Officer are not correct.

12. From the language of Section 13A1, it is clear that a member of armed forces shall be entitled to recover from his tenant the possession of any premises owned by him on the ground that such premises are bonafide required by him for occupation by himself or by any member of his family. Therefore, it is necessary that he should be owner of the premises and it should be in possession of his tenant and he should bonafide require it for occupation of himself or by member of his family. Admittedly, respondent No.1 was a tenant in the suit premises since 1970. The applicant retired from service on 1.5.93 and he claims to have received 1/8th share in the property on 10.3.93 on the basis of the sale deed and 1/8th share on the basis of the gift deed executed on 30.3.93. Prior to that, he had no interest

or share in this property. Admittedly, respondent No.1 was not tenant of the applicant nor the applicant was receiving rent from respondent No.1. Respondent No.1 had never attorned tenancy in favour of the applicant. The question is when and how the applicant became landlord and owner of the property. The gift deed of immovable property, irrespective of its valuation, is compulsorily required to be registered under section 17(1)(a) of the Registration Act, 1908. The sale deed of immovable property of the value of one hundred rupees and above is also compulsorily required to be registered. In the present case, according to the applicant, he had purchased 1/8th share from Satwant for consideration of Rs.4 lakhs. Therefore, the sale deed was required to be compulsorily registered. Admittedly, this document was never registered. Even the gift deed was not registered. The deed of confirmation of the gift deed was executed and registered on 3.6.1994. Under Section 41 of the Maharashtra Co-operative Societies Act, 1960, nothing in clauses (b) and (c) of sub-section (1) of Section 17 of the Indian Registration Act, shall apply to any instrument relating to shares in a society, notwithstanding that the assets of the society consist in whole or in part of immovable property. In view of this provision, non-testamentary instrument or a conveyance deed or an acknowledgment of the conveyance deed relating to a share in a society,

notwithstanding that the assets of the society consist in whole or in part of immovable property, are exempted from being registered under Section 41. However, it will be clear that such exemption is not available to the instrument of gift of immovable property which fall under Section 17(1)(a) of the Registration Act. Therefore, the gift deed of his share in immovable property in a co-operative society or a gift of a share in the society which has the effect of transfer of rights over the immovable property is not exempted from being registered. Similar view is taken by this Court in **Jetu Jacques vs. Soleshop Industries 2006 (1) MHW 21**. As the gift deed was not registered, it was not valid under the law and it could become effective at the most on the day when the deed of confirmation was executed and registered on 3.6.94. Therefore, the gift deed could take effect only from 3.6.94 and not before that.

13. Admittedly, the applicant made an application to the co-operative society for transfer of 1/4th share in his favour in the suit flat and as per the evidence of two witnesses from the said co-operative society, it is clear that the 1/4th share was transferred in favour of the applicant by resolution dated 12.8.93 by the society. Under Section 38(1) of the Maharashtra Co-operative Societies Act, every society shall keep a

register of its members and enter therein the name, address and occupation of each member, date of admission of each person as member, the date on which any person ceased to be member. Section 38(2) provides that the register shall be prima facie evidence of the date on which any person was admitted to membership and of the date on which he ceased to be member. Therefore, the entry taken in the register of the society, on the basis of resolution dated 12.8.93, is prima facie evidence to show that the applicant had become member of the society on that date.

14. Learned Counsel for the applicant contended that the share held in Tenant Co-partnership Housing society is not immovable property and the transfer does not require registration. In support of this, he relied upon the authority in **Usha Arvind Dongre vs. Suresh Raghunath Kotwal, 1990 Mh.L.J.306**. In that case, the learned Single of this Court had held that in the case of a tenant co-partnership housing society, the title to the flat remains in the society and is not affected by the transfer of share in the society and only right to occupy a flat flows from ownership of share in such a co-operative society. It is contended that in view of this, merely because the documents of sale deed and gift deed were not registered, they do not adversely affect the claim of the applicant. However, I have already

pointed out that even if these two documents are kept aside, the applicant can claim to be the shareholder of the society only from the date when 1/4th share was transferred to him in his name by passing a resolution on 12.8.93 and not before that. Taking into consideration the circumstances and the legal position, it must be held that the applicant/plaintif was neither owner of the flat nor landlord when he retired from service and also in June, 1993 when he filed an application for eviction against respondent No.1 and on that count itself the application for eviction was liable to be rejected.

15. The learned Counsel for the applicant vehemently contended that as per Section 47 of the Registration Act, a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. But this provision will not be applicable in respect of the sale deed of 1/8th share in favour of the applicant because that sale deed was never registered. The question is whether this benefit can be given in respect of the gift deed? As pointed out earlier, the gift deed itself was not registered and the gift of immovable property could not be made by any instrument which is not registered. Further, if the document is executed and requires to be

registered, it can be presented for registration within four months from the date of its execution as per Section 23 of the Registration Act. Section 25 of the Registration Act provides that if,owing to urgent necessity or unavoidable accident, any document executed in India is not presented for registration within the specified period, the Registrar may direct on payment of fine that such document be accepted for registration even beyond the prescribed period. However, in the present case, neither it was a case of the applicant that due to any urgent necessity or unavoidable accident, the gift deed could not be registered within the period of four months nor the Registrar had relaxed that period by imposing some fine and had not permitted registration of that document beyond the period of four months. Therefore, it must be held that the gift deed itself does not take effect till the confirmation of deed was not executed and registered. As the confirmation deed itself was not the gift deed, but it was only acknowledgment of confirmation, this document will take effect only when it was executed and registered on 3.6.94. In view of these circumstances, it appears that the plaintiff/applicant could not claim any right in the suit property till 3.6.94 on the basis of the gift deed and he also could not claim any right in the property on the basis of the sale deed from the date of its execution because the document was never

registered. However, he can take the benefit of transfer of 1/4th share in his favour on the basis of the resolution passed by the Co-operative Society and the entry taken in the register of members.

16. It is contended on behalf of respondent No.1 that Surjeet and Satwant, who were holding 1/8th share each in the property, were not examined as witnesses and they had not applied to the Society for transfer of their share and, therefore, the transfer in favour of the applicant on the basis of his own application is not valid. The transfer of their shares in favour of the applicant could be challenged only by Surjeet and Satwant, but it appears that none of them has ever challenged the said transfer. Therefore, in my considered opinion, the transfer should be treated to be effective but only from the date when the society passed the resolution and recorded the name of the applicant as holder of 1/4th share in the register of members.

17. In **Winifred Ross and another (Legal representative of plaintiff) vs. Ivy Fonseca and others, 1984 Mh.L.J. 411**, the Supreme Court clearly held that an ex-member of the armed forces who had acquired title to the premises in question and became its landlord after he has retired from Army service cannot maintain a suit for possession of the premises

from the tenant under section 13A1 of the Act. Their Lordships observed as follows in paragraph 5 of the Judgment :-

> *"5. The object of section 13-A1 of the Act is quite a laudable one. It is introduced in order to enable members of the Armed Forces who have leased out their buildings when they are in service to recover quickly possession of such buildings without the restrictions contained in the other parts of the Act either when they are still in service or on their retirement for their use and occupation or for the use and occupation of the members of their family. Even the widows of such landlords may under clause (b) of section 13A1 can recover possession of such buildings if they satisfied the conditions mentioned therein. An analysis of clause (a) of section 13-A1 shows that the person who wishes to claim the benefit of that section should be a landlord of the premises while he is a member of the Armed Forces of the Union and that he may recover possession of the premises on the ground that member of his family on the production of the required certificate either while he is still in service or after his retirement. The essential requirement is that he should have*

leased out the building while he was a member of the Armed Forces. His widow can also recover the premises of which she is or has become the landlord under clause (b) subject to fulfilment of the conditions. Having regard to the object and purposes of the Act and in particular section 13-A1 it is difficult to hold that section 13-A1 can be availed of by an ex-member of the Armed Forces to recover from a tenant possession of a building which he acquires after his retirement. Acceptance of this argument will expose the very section 13-A1 of the Act to a successful challenge on the ground of violation of Article 14 of the Constitution for if that were so, a retired military officer who has no house of his own can purchase any building in the occupation of a tenant after his retirement, successfully evict a tenant living in it on the ground that he needs it for his use, then sell it for a fancy price and again because he has no house of his own, he can again acquire another building and deal with it in the same way. There appears to be no restriction on the number of times he can do so. It was argued that he would not be able to get the requisite certificate under the Act more than once. A reading of section 13-A1 of the act shows that

the certificate should show that the person concerned has been a member of the Armed Forces and that he does not possess any other suitable residence in the local area where he or members of his family can reside. Those conditions being satisfied the certificate cannot be refused. A liberal construction of section 13-A1 of the Act as it is being pressed upon us would also enable unscrupulous landlords who cannot get rid of tenants to transfer their premises to ex-military men, as it has been done in this case in order to avail of the benefit of the said section with a private arrangement between them. It is also possible that a person who has retired from the Armed Forces may after retirement lease out a premises belonging to him in favour of a tenant and then seek his eviction at his will under section 13-A1 of the Act...."

Relying *on the authority in* **Satish Kumar Banwarilal Sharma vs. Major Virendra D. Ganju, 1998 (3) Mh.L.J.211**, this Court also held that a landlord who is or who had been in military service can recover possession of the leased premises under Section 13A1 when he himself had leased out the premises while he had been a member of the armed forces. It was held that a person who acquires the property and title of

landlordship after his retirement from the armed forces would not be entitled to recover possession of the leased premises by virtue of provision contained in Section 13A1. These two authorities are aptly applicable to the facts of the present case. The present applicant had retired from the service on 1.5.1993, but as pointed out above, he got the title to the extent of 1/4th share in the suit properly only on 12.8.93 when the society passed resolution in his favour to the extent of 1/4th share.

18. Learned counsel for the applicant contended that even one of the co-owners of the premises can file an application for eviction if the other co-owners have not objected to the claim of eviction. In support of this, he relied upon **Pal Singh vs. Sunder Singh (dead) by Lrs. and others, AIR 1989 SC 758**. According to him, in the present case, respondent No.2 holding 3/4th share in the property has given consent and, therefore, the applicant could make application for eviction. However, in my considered opinion, this authority does not help him because the applicant was not having any share in the property when he filed the application in June 1993.

19. It is now well settled that even though the certificate had been issued by the authorised office to the effect that the applicant had retired from the armed

forces and that he was not having premises in the local area of Bombay, that certificate is useful only to prove these two facts; that he had retired from service on 1.5.1993 and that he was not having any other premises within the local limits of Bombay. But that certificate is not sufficient to prove his bonafide requirement. The bonafide requirement has to be established and proved independently by the applicant by leading necessary evidence. I am supported, in taking this view, by **Ram Sadashiv Shinde vs. Khanderao AIR 1990 Bom.262.** The applicant examined himself and also Dr. Mrs.Samuel, who was serving as specialist in Nuclear Medicine in Radiation Medical Centre of BARC and Tata Memorial Hospital since 1966. Her evidence reveals that the applicant was referred to this Centre for post operative treatment in 1989 itself. He was already operated upon for Thyroid Cancer at Pune Command Hospital and since 1987 he was given treatment of Radio Active Iodine. For this purpose, oral medicine is required to be given. He was regularly visiting the Radiation Medicine Centre of BARC at Mumbai since 1989 and his last visit was in November 1996. According to her, treatment was given to him only once but follow-up is for life long. In the cross-examinatiion, she admitted that when the applicant visited Radiation Medicine Centre of BARC, he had problem of painful left shoulders, burning sensation, etc. but this problem did

not require nuclear treatment. The learned trial Court noted that as per evidence on record in Delhi also there is Rajiv Gandhi Cancer Institute and such follow-up can be continued in that hospital also. As per the admissions of the applicant, in the cross-examination, after retirement, he had purchased a flat in Delhi and his children were also settled in or around Delhi. Therefore, there was no reason for him to settle in Mumbai. It was also not necessary for him to settle in Mumbai for the purpose of follow-up action in respect of thyroid cancer which was already treated in the year 1987 at the Command Hospital, Pune. Taking into consideration these evidence, the learned Competent Authority came to the conclusion that the applicant did not bonafide require the suit premises for his own occupation in Mumbai and it as only an attempt to evict respondent No.1 as landlords had previously failed in getting an eviction decree.

20. The learned Competent Authority has observed in the last para of the judgment that the applicant had failed to prove beyond shadow of doubt that he bonafide requires the premises for his own use. Even though the learned Competent Authority committed error in observing that the applicant was required to prove his claim beyond a shadow of reasonable doubt, he had appreciated his evidence properly before coming to the conclusion

that the applicant is not entitled to a decree for eviction.

21. Taking into consideration the facts and circumstances, I do not see any reason to interfere in the impugned order.

22. In the result, the Revision Application stands dismissed.

(J.H.BHATIA,J.)